IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3813 of 1991
With
SPECIAL CIVIL APPLICATION No. 6885 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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PATAN NAGARPALIKA - Petitioner(s)

Versus

COLLECTOR & 3 - Respondent(s)

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Special Civil Application No. 3813 of 1991

Appearance :
MR SJ GAEKWAD for Petitioner,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No: 1 & 2.
MR JD AJMERA for Respondent No. 3,
MR NK MAJMUDAR for Respondent(s) : 4,

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Special Civil Application No. 6885 of 1990

Appearance :
MR NK MAJMUDAR for the Petitioner,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No: 1
Served Respondent No.2
MR JD AJMERA for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/02/2006

ORAL JUDGMENT

1. Special Civil Application No. 3813 of 1991 has been filed by the Patan NagarPalika challenging the order dated 07.11.1987 passed by the Collector, Mehsana as upheld by an order dated 13.09.1989 passed by Additional Chief Secretary, Revenue Department, Government of Gujarat.

2. Special Civil Application No. 6885 of 1990 has been filed by Patan Antyaj Mandal a public charitable Trust challenging the same orders passed by the Revenue authorities.

3. Short facts leading to the present petition can be noticed from Special Civil Application No. 3813 of 1991. The Petitioner-NagarPalika upon being constituted was entrusted the task of running primary schools situated within the limits of NagarPalika which schools were hitherto being run by the State Government. For the above purpose the building in which the existing schools were being run by the State Government came to be transferred in favour of the NagarPalika. The general Resolution dated 28.02.1968 was issued by the State Government, which made provisions for transferring school

buildings under different exigencies. With respect to building which were of the ownership of the government, ownership thereof was transferred in favour of the petitioner-Nagarpalika. Premises which were occupied on rental basis were also transferred on the same terms and conditions. However, we are not concerned with other eventualities. In the present case, it is not in dispute that in favour of the petitioner-Nagar Palika a building situated in plot bearing survey No. 1, Tikka No. 7/2 was transferred to the petitioner -Nagar Palika on ownership basis.

3.1 It is the case of the petitioner-NagarPalika that the school building was in a dilapidated condition. The petitioner-NagarPalika therefore, resolved to pull down the building and sell the plot and from the revenue so earned, to create facilities for the primary schools. The resolution in this regard was passed on 26.05.1972. The building was to be pulled down and plots were to be sold through auction. Initially, the Collector, Mehsana has made certain reservations on the legality of said resolution. He therefore, initiated proceedings under Section 258 of the Gujarat Municipalities Act (hereinafter to be referred to as “the said Act”, for short). Further after hearing the petitioner the

Collector, Mehasana passed an order dated 10.07.1973 dropping the proceedings and rejected the stay granted against the implementation of the resolution.

4. Pursuant to this order passed by the Collector, the petitioner-Nagar Palika entered into the sale deed with Patan Antyaj Mandal who is petitioner in Special Civil Application No. 6885 of 1990. The sale-deed was executed on 17.06.1977.

5. Many years thereafter, the Collector, Mehasana once again initiated proceedings under Section 258 of the said Act and imposed a stay on further implementation thereon. On 22.09.1986 after hearing the petitioner-NagarPalika , the Collector, Mehasana passed fresh order on 07.11.1987 primarily, prohibiting the execution of the resolution. He observed that the order 10.07.1973 passed by the Collector, Mehsana is defective. He found that the land bearing Survey No. 1 Tikka No.7/2 was granted to the municipality for specific purpose and the Municipality could not have auctioned the plot and permitted construction of shopping center thereon. The Collector further set aside the sale-deed dated 17.06.1977. He directed that the possession of the plot in question be taken over.

5.1 The Patan Antyaj Pragati Mandal preferred revision application against the order passed by the Collector, Mehsana before the State Government. Additional Chief Secretary rejected the revision application by his impugned order dated 13.09.1989.

6. Having heard the learned Advocates for the parties and having perused the material on record, I find that, in the Resolution dated 28.02.1968, there was no specific condition that the NagarPalika will use school building only for the purpose of running primary schools thereon. In fact ownership of the school building was transferred to the NagaPalika free of charge. I find no specific condition that such building could have been used only for the purpose of running schools. It is true that the Nagarpalika had undertaken the liability to run the school, which was till then run by the State Government. It is true that for the above purpose, the existing building of the school was transferred to the NagarPalika. However, I do not see any specific condition that the NagarPalika had the responsibility to run the school only at the said place, and that the property could not have been used to any other use at any other time in future.

7. In addition thereof, I also find that the Resolution passed by the Municipality was once scrutinized by the Collector in exercise of powers under Section 258 of the said Act. The Collector found nothing objectionable in the Resolution and dropped the proceedings by order dated 10.07.1973. Many years thereafter, it was not open for the new incumbent to the post of the Collector to review the earlier decision that his predecessor had taken and come to a different conclusion and set aside the sale transaction entered into by the Nagarpalika on the strength of earlier order of the Collector dated 10.07.1973. On both these counts, I find that the impugned orders cannot be sustained. It may be noted that there is no charge against the Municipality that the plot in question was sold at a price lesser than the true value of the land and or that the fund so generated was misapplied.

8. In that view of the matter and in the facts of the present case, I am unable to sustain the orders passed by the Collector and the State Government. For the above reasons, the impugned orders dated 07.11.1987 and 13.09.1989 are hereby quashed. In the result, both the petitions are allowed. Rule is made absolute. No order as

to costs.

[Akil Kureshi, J.]

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